

## ARBITRATION

Companies are turning to mandatory arbitration in hopes of resolving disputes more quickly and less expensively than in the courts. But lawyers and other experts say that for the consumer, arbitration can cost more, with fees that could run into thousands of dollars. Arbitration also permits less evidence-gathering that can help win a case, usually doesn't allow for appeals, and may be less likely to result in a victory.

The growing use of mandatory arbitration clauses is beginning to attract the attention of regulators at the Federal Reserve Board and Federal Trade Commission, who fear that consumers may be losing significant rights without realizing it. The Federal Reserve Board is looking carefully at the use of arbitration clauses in all consumer credit agreements, including mortgages and car loans, to make sure "consumers are not being deprived of their rights."

### Clauses Obscure

The problem is that many consumers agree to mandatory arbitration without knowing it. The clauses may be buried in the pile of documents a consumer is asked to sign quickly, such as during a real estate settlement or tacked onto the back of a sales receipt. A growing number of companies - among them banks, computer makers, insurance firms, and car dealers - that are rewriting the fine print of their contracts and sales agreements require that consumers agree, in advance, to give up their right to sue. Such clauses also bar class-action lawsuits.

Many credit card companies, large and small, also are turning to arbitration. First USA Bank, the largest issuer of Visa cards with 58 million customers, began requiring mandatory arbitration in 1997. American

Express customers, by using their card after June 1, 1999, will give up their right to sue the company.

### What is arbitration?

Arbitration is the referral of a dispute to one or more impartial persons for final and binding determination. It is designed to be private, informal, quick, practical, and economical. Parties can exercise additional control over the arbitration process by adding specific provisions to their contract's arbitration clause or, when a dispute arises, by modifying certain of the arbitration rules to suit a particular dispute. Stipulations may be made regarding confidentiality of proprietary information, evidence, locale, the number of arbitrators, and issues subject to arbitration, as examples.

The parties may also provide for expedited arbitration procedures, including expedited rendering of the award, if they anticipate a need for hearings to be scheduled on short notice.

An important feature of arbitration is its informality. Under the standard rules, the procedure is relatively simple: legal rules of evidence are not applicable; there is no motion practice or court conference; there is no requirement for transcripts of the proceedings or for written opinions of the arbitrators. Although there is no formal discovery process, the rules allow the arbitrator to require production of relevant documents, the deposition of factual witnesses, and an exchange of reports of expert witnesses. The standard rules are flexible and may be varied by mutual agreement of the parties.

The fact that the arbitrators are trained and have professional expertise is also important. Arbitrators are selected for specific cases because of their knowledge of the subject matter. Based on that experience,

arbitrators can render an award grounded on thoughtful and thorough analysis.

Most parties provide for arbitration of disputes because they are seeking a final and binding resolution of their business conflicts. Court intervention and review are limited by applicable state or federal arbitration laws; award enforcement is facilitated by those same laws.

Another important advantage of arbitration is that it is designed to be private, having no public record of the dispute or of the facts presented in resolving the dispute.

### What are the benefits of arbitration?

\* **Confidentiality.** Arbitration is a private process. There is no public record of the proceedings.

\* **Limited Discovery.** Extensive discovery is avoided.

\* Arbitrators arrange for **limited exchange of documents, witness lists, and depositions** appropriate to the particular dispute.

\* **Speed.** There is no docket or backlog in arbitration. Hearings are scheduled as soon as the parties and the arbitrator have dates available.

\* **Expert Neutrals.** The arbitrators have expertise in the subject matter in dispute, as well as training in the arbitration process.

\* **Cost Savings.** Because of the limited discovery and informal hearing procedures, as well as the expedited nature of the process, the parties save on legal fees and transactional costs.

\* **Preservation of Business Relationships.** In most instances, litigation between professionals and their

clients destroys the working relationship. Arbitration is less adversarial and, because of its informal nature, it is more likely that the parties will be able to continue their business relationship.

\* Parties may arbitrate disputes either by inserting a future-disputes clause into a contract or by submitting an existing dispute to arbitration.

## Cost of Arbitration can Sometimes be Higher

To deter frivolous complaints, the cost of arbitration can sometimes be significantly higher than court fees, making it financially impossible for some consumers to seek relief. However in the case of *Williams v. Aetna Finance* (83 Ohio St. 3d 464; 700 N.E. 2d 859, 11/4/98), the Supreme Court of Ohio struck down a clause which required a consumer to pay large fees simply to advance a case to arbitration. Citing a 1993 decision against ITT Finance Co., the court stated that "[i]n a dispute over a loan of \$2,000 it would scarcely make sense to spend a minimum of \$850 just to obtain a participatory hearing." The *Williams* case involved a "pitchman" who was paid referral fees to bring homeowners to a finance company for expensive home equity loans.

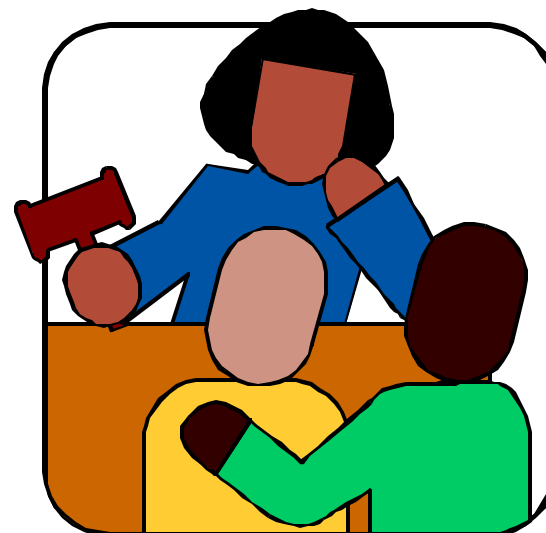
The Indiana Department of Financial Institutions, Division of Consumer Credit has many other credit related brochures available, such as:

Answers to Credit Problems  
Applying for Credit  
At Home Shopping Rights  
Bankruptcy Facts  
Buried in Debt  
Car Financing Scams  
Charge Card Fraud  
Choosing A Credit Card  
Co-Signing  
Credit and Divorce  
Credit and Older Consumers  
Deep in Debt?  
Equal Credit Opportunity  
Fair Credit Reporting  
Fair Debt Collection  
Gold Cards  
Hang up on Fraud  
High Rate Mortgages  
Home Equity Credit Lines  
How to Avoid Bankruptcy  
Indiana Uniform Consumer Credit Code  
Look Before you Lease  
Mortgage Loans  
Repossession  
Reverse Mortgage Loans  
Rule of 78s – What is it?  
Scoring for Credit  
Shopping for Credit  
Using Credit Cards  
Variable Rate Credit  
What is a Budget?  
What is the DFI?

Call our toll-free number or write to the address on the cover for a copy of any of the brochures listed or for further consumer credit information.



# Right to Sue Diminishing



## DEPARTMENT OF FINANCIAL INSTITUTIONS

Consumer Credit Division  
30 South Meridian Street, Suite 300  
Indianapolis, Indiana 46204  
317-232-3955  
1-800-382-4880

